

INFORMATION

For John Hamilton of Gilkerscleugh
Against

John Weir of Newtown.

THe said John Weir having in July 1690 given in a Petition to the Parliament representing that in the late times there had been some Civil Actions depending betwixt him and Gilkerscleugh, whereby he was so stirred up against Newtown, that during the Dependence, Gilkerscleugh threatened that if Newtown would not desist, he would inform such words against Newtown as should be Treasonable, condescending at the same time upon the Words, and that accordingly thereafter Newtown was taken and made Prisoner in Edinburgh, and got an Indictment to answer before the Justices for the saids Words, as also that he appeared as a Witness, and in the precognition deponed, conform to the Libel. But that the other Witnesses, viz. Alexander Baillie and Andrew Symonton not proving sufficiently, he was continued Prisoner till February 1686, that he was dismissed upon a Bill to the Council, and subsuming that the said Process and Imprisonment was occasioned by Gilkerscleugh's malice against him, and that he was thereby put to the Expenses of above 500 lib. Sterling, and concluding against Gilkerscleugh, and the other two Witnesses that they may be decerned conjunctly and severally to make payment of the said Sum with the Annualrents thereof since the date and time of expending the same, which having come to be called before the Committee of Fines and Forfeitures, and being debate and Probation taken: and all these Actions that was depending before the Committee of Fines and Forfeitures are now remitted to the Committee for Security of the Nation, that the Parties may be heard before them, Gilkerscleugh before he make any particular Answer to the foresaid groundless and false Representation, he humbly offers to the Consideration of the Parliament, that he in his minority being advised by ~~the said John Weir~~ to enrole the said John Weir one of his Curators, upon this Ground and Pretence that he was an Agent and Writer, and so could serve Gilkerscleugh in any Affair that he had depending at Law, and he being allowed to intromet with the whole Rents of Gilkerscleugh's Estate, and others belonging to him, whereof to this hour Gilkerscleugh could never get an Account, and albeit he will be Debitor to Gilkerscleugh in great Sums of Money, as also the deceast Gilkerscleugh, the Defenders Father being Cautioner for John Weir the Pursuers Father in Law to James Johnston of Carriffen for a considerable Sum, whereof the Pursuer by his Contract of marriage betwixt him and his Wife, was obliged to make payment, and relieve the Cautioner, in respect the said John Weir had disposed his Estate to the Pursuer, who married his eldest Daughter, yet so far was he from paying thereof, that he suffered Gilkerscleugh his Pupills Estate to be apprysed for the same, the Legal whereof is now expired, through the Default and Fraud of the Pursuer, so that it is evident that the Pursuer will be Debitor to Gilkerscleugh in greater Sums than he is worth.

This being premised, It is answered for Gilkerscleugh. 1. That its not so much as alledged in the said Lybel, that he meddled with any of Newtowns Estate, either as Fine or Forefaulture, or that he any other manner of way meddled with any thing that belonged to him, so that he not being able to lybel in the terms of the Act of Parliament anent Fines and Forefaultures, he has patch'd up the saids false and irrelevant Stories contrived by him, of purpose to force from Gilkerscleugh a Discharge of the foresaid just Debts, for which he knows he will be lyable: And whereas it is alledged that Gilkerscleugh was stirred up against him, upon the account of Civil Actions depending betwixt them, the same is grossly calumnious, seing Newtown had never any ground, nor did intend any Action against Gilkerscleugh, but on the contrary he intended an Action against Newtown to relieve him of the said Debt, for which his Father was Cautioner, and which Newtown by his Contract was bound to satisfy, as said is, and he was so conscious that the said Pursuit was just, and that he will be lyable, that he was necessitat to use a most disingenuous Shift to stop the Process, by debarring Gilkerscleugh with Horning: So that it was absolutely false to pretend that he had any Process against Gilkerscleugh, which might have stirred up Gilkerscleugh against him.

2. If the Libel as it is conceived were true, as it is most false, yet it is no ways relevant. 1. Because the words alledged to be informed by Gilkerscleugh, are not lybelled as they ought to have been. 2. If the words had been lybelled, then they would either be Treasonable or not, and if they were such, then he was bound to have informed, otherways he himself would have been lyable in the

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pain of Treason for concealing, or they were not Treasonable, in which case *Newtown* would have sustained no prejudice thereby. 3. It is notourly known, that there was previous Cognition taken by these who had Commission through the whole Western Shires, what one man knew against another, and obliged them to depone upon Oath, otherways they were sent to Prison; as also it was an ordinary Question (whom ye do know that knows any thing of such an Affair) so that as a person was obliged to tell who were *Contestates*, and one these Precognitions the Indictments at the Circuit Courts were taken out, and *Newtowns* Indictment consists of many more Articles than these words alledged to be informed against him by *Gilkerscleugh*, which were separately relevant; and if the words had been treasonable as *Newtown* pretends, then he was obliged to discover the same, especially when he saw a severe Example before him of the Laird of *Deuchall*, who was forefault for Concealing only that which was whispered in his Ear by Sir *John Cochran*, who craved of him some Supply for the Earl of *Argyle*.

3. Seing there was so universal a Precognition taken, as said is, all that *Gilkerscleugh* can pretend to have informed was the Words spoken to him by *Newtown*, and it is thought strange how the dilating of these can be pretended to be the only ground of his Imprisonment, seing there is four or five separat Articles in his Indictment, every one thereof was relevant to infer Treason, and which cannot be pretended that ever *Gilkerscleugh* knew or informed of, because *Newtown* was indited in June 1683 at the Circuit Court, wherein it is specially lybelled, *that he sent his Man and Horse to Bothwell, and that he took a sham Instrument against his Servant at Lanerk, protesting that he was innocent of his going, and that he only sent his man to bring back the Horse, but not to joyn with the Rebels*, and that was the first thing that made him be taken notice of at *Lanerk*, and *Gilkerscleugh's* Deposition is not taken till October 1683, which was after the Inditement, so that it is ridiculous to alledge that *Newtowns* Incarceration proceeded from *Gilkerscleugh*, seing *Newtown* had been formerly Indited, and declared Fugitive for not appearing, and who upon his return and coming in was relaxed upon his taking the Test. 2. As *Newtown* was relevantly Indited before *Gilkerscleugh* was examined, as said is, so it was groundless to pretend that any thing could be fixt against *Gilkerscleugh* upon that account, seing by the Depositions adduced, it is clearly proven that *Andrew Symontoun* and *Alexander Baillie* said that they would declare what would hang *Newtown*, and that they would follow him to the Gallows.

4. As the Representation made in the foresaid Complaint, is Calumnious and Irrelevant, so it is against sense to think that *Gilkerscleugh* could have any Design to have *Newtown* forfeit, because *Newtown* being Debitor to him in great Sums of Money: If *Newtown* had been forfeit it would have ruined *Gilkerscleugh*. And further, to shew how absolutely groundless the said Lybel is, and how *Gilkerscleugh* was against the forfeiting of *Newtown*, that if need were he could prove by *Littelegil Eldershaw*, and Mr. *John Brown*, who were Witnesses in *Newtown's* Exculpation at that time, that *Gilkerscleugh* frequently said to them, He could heartily wish, some means could be fallen upon to cast him from being a Witness, which clearly demonstrates that he had no design to get him forfeit. And the truth was, after he was liberate by taking the Test, all that befell him thereafter, was by his own default, seing he, to ingratiate himself with the then Chancellor, he went and told several idle Stories about the *Scots-men* he had conversed with at *London*, and what their Design was, who did report the samen to the Council, and who did immediatly order a Mace to carry him before them; and they finding that he pervaricat in his Examination, they thereupon immediatly sent him to Prison, where he continued till he was brought to a Tryal for the Crimes of Treason: And it is notourly known, how *Newtown* has oppressed and abused the Countrey in several things, and of late he Committed a gross Malverfe and breach of his Trust, in so far as in the year 1686 or thereby, he being commissionat by the Duke of *Hamilton* to uplift some Rests of the Tax tion, he did grossly offer to defraud the Duke, and oppress the Countrey, which being represented to the Council, he was imprisoned and fined in 500 merks.

5. If there were any relevancy in the foresaid Lybel, as there is not, for the Reasons foresaid, yet he cannot be lyable, because he is secured by the Act of Indemnity in September 1688, by which, all Crimes, Offences, Delinquencies, and Transgressions of whatsoever nature or quality, committed, acted or done, by any one Subject to another, by Word, Write, or any other Act of Commission or Omission, which directly or indirectly may import by any inference or Construction, the contravention of any Law, Act of Parliament, Custom or Constitution of this Kingdom, or may infer any pain or punishment against any of the Subjects, to the prejudice of their Lives, Fortunes, Estates or Reputations, either *ad vindictam publicam vel privatam*, either for Damage or Interest, are Indemnified. And Discharges any of the Subjects to be called in question for the samen, either Civilly or Criminally: and Ordains that the said General Indemnity shal be interpret in the most favourable and comprehensive Sense the samen can admit of for security of the Subjects in the Premisses: and what is now lybelled against *Gilkerscleugh*, if there were any relevancy or truth in the thing, as there is neither, the samen does clearly fall under the Act of Indemnity.

6. If such a lybel as this should be sustained, it might be a ground of thousands of Process of that nature, for all Persons that were contained in the *Porteous Rolls*, may upon as good, and better Reason raise such Actions against the Witnesses who were likewise Informers. So that if such an Action should be sustained, it would be of a dangerous Preparative to the whole Nation. And it cannot be instanced that ever there was such an Action pursued, far less sustained.

It was answered for *Newtown*, that he had an *Action* of *Pointing of the Ground*, depending against *Gilkerfclough*, which was the occasion that he was irritate against him, and albeit he was chosen one of *Gilkerfclough's* Curators, yet he had no *Intromission* except only with 700 *lib.* or thereby, and his *Obligation* to relieve *Gilkerfclough* was only conditional, in case his Father in Law should disburden the *Estate* of other Debts which was not dene: And that it is sufficiently proven by the *Depositions* of the *Witnesses*, *Gilkerfclough* to have informed *Treason* against *Newtown*, and that it appears by the *Process* against *Newtown*, that the *Advocat* past from all the *Lybel*, except as to the *Expressions* informed by *Gilkerfclough*, and the reason of his *Imprisonment* by the *Council* was, because he would not inform against *Cesnock* and the other *Scots-men* at *London*, and the Reason why he was fined was, because he allowed the *Town of Linlithgow* to make use of the *Copy* of a *Suspension* as a *Principal*, and the *Act* of *Indemnity* does not meet this case, because it could not take away any *Parries* *privat* *Damnage* and *Interest*, and by the *Claim of Right*, nothing in the late times should be drawn in *Consequence*.

It is Replied for *Gilkerfclough*. 1. That he never knew any *Action* that *Newtown* had, depending against him, neither does he instruct any such *Process*, and it is not like that he would have pursued any such *Action* against *Gilkerfclough*, if there had been any *Ground* for it, as there is not, seeing he knew that he was debtor to *Gilkerfclough* in great *Sums* of *Money*.

2. It is absolutely false which *Newtown* alledges, That albeit he was one of the *Curators*, yet he did not *Intromet*, except only with a smal *Sum*, seeing it is notourly known in the whole *Countrey*, that he was the sole *intrometting* *Curator*, and uplifted the *Rents* during all the years of the *Curatry*, As also, he *intrometted* with, and disposed of the *Moveables*, which was of a considerable *Value*: And the account of his *Intromissions* being drawn up, and allowance given of all his *Payments*, he will be yet resting *Gilkerfclough* above 30000 *lib.* So that it is evident, that all that *Newtown* designs by his groundless and calumnious *Pursute*, is only of purpose to frighten *Gilkerfclough* from pursuing *Newtown* for his justs Debts, and to force him to some disadvantageous *Transaction*: For the truth is *Newtown* knows very well, and so is it known to all the *Countrey* about that he will be Debtor to *Gilkerfclough* in more than all he is worth.

3. As to that Pretence that *Newtown* was only obliged to relieve *Gilkerfclough's* Father of the *Cautionry*, upon condition that *Newtown's* Father in Law should disburden the *Estate* of other Debts, this is like the rest of *Newtown's* calumnious Alledgeances, for there is no such condition in *Newtown's* Contract of *Marriage*; but he is expressly oblig'd to relieve *Gilkerfclough's* Father of the *Cautionry*, which will appear by the Contract it self, if *Newtown* would produce it.

4. As to what is alledged that *Gilkerfclough* should have informed *Treason* against *Newtown* to be sufficiently proven. It is Replied, 1. That the former Answer is opposed, that it is no wayes Criminal to inform of matter of *Treason*, seeing by the Laws of this and all other Nations, every man is oblig'd to inform against any person that is guilty of *Treason*: and if such an *Action* as this should be sustained it would absolutely hinder all persons hereafter to inform matter of *Treason*, & how prejudicial that might be to the King and the Nation: The *Parliament* may easily judge. 2. As it is not possible, that such a Complaint can be sustained to make any Man liable for *Damages* without overturning the fundamental Laws of the Nation, so neither is the said irrelevant Complent proven, for the *Lybel* resolving in these two points, such as the time of *Newtown's* *Imprisonment*, and the cause of it, that it was *Gilkerfclough's* informing treasonable Words against him, but so it is that none of these two Points are proven. For first, as to the time, it being alledged that he was two years and a half in prison, the *Witnesses* only declares that he entered to prison in the year 1683, and that they saw him in Prison in the year 1685, but does not mention the particular time they did see him in prison, nor that he was in Prison all the time. 2. As to the Cause of his *Imprisonment*, it is not proven against the Defender, neither can it be pretended that it was upon the account of any Information *Gilkerfclough* gave against him, seeing *Newtown* acknowledges by an Information signed under his Hand lying in *Process*; That the occasion of his being put in Prison was, that he refused to inform against *Cesnock* and other *Scots* Gentlemen at *London*, which clearly takes off all the conjectural Probation that *Newtown* has Adduced against *Gilkerfclough*, as if the Cause of his *Imprisonment* had been *Gilkerfclough's* Information against him. 3. Several of the *Witnesses* aduced by *Newtown*, and particularly *George Ogilvie* declares that he was sent by *Meldrum* to the Tolbooth of *Hamiltoun*, to get Information from *Gilkerfclough* against *Newtown* by which it is evident that he did not give any Information till he was required by these Commissionat by the Government which is the very time libelled that *Gilkerfclough* should have given the Information, and it being become Relevant by the Committie, and before the time libelled, or at the same time which is all one, *Gilkerfclough* was required to give Information by these who was Commissionat by the Government, relevant to Liberate him from this Groundless Pursuit, and this being Proven by the Pursuer's own witnesses; *Gilkerfclough* ought to be Affoizied, even conform to the Terms of the Committies former Interlocutor. 4. The only Witness that *Newtown* makes Use of, for proving that *Gilkerfclough* Inform'd treasonable Words against him are *John Hamiltoun* of *Ellershaw* and Mr. *John Brown*, and all that they Depon is, that they heard *Gilkerfclough* say, that if he did not get his own, and Right in an Affair that he had with *Newtown* that he should follow him to the Gallows, and if he got not him Hanged, he should Stick him, which might have been some Words that *Gilkerfclough* said in Passion, but there is nothing in these Words, or in all the *Depositions* in the Terms of the Libel, that *Gilkerfclough* should have Inform'd treasonable Words against *Newtown*, nor so much as that he did Inform against him; so that it is Impossible that such a Probation can be sustained to

make *Gilkercleugh* lyable for Damages if the Libel was otherways Relevant as it is not. 5. It is clear from the Depositions that the Persons who Threatned to Inform against *Newtown*, were *Andrew Symintor* and *Alexander Baillie*, so that as it is evident by the said Probation, that any thing that was said by *Gilkercleugh* was not any Treasonable Words that *Newtown* should have spoken, nor that he In'ormed against him, so that it is clear by the said Probation, that *Syminton* and *Baillie* were the Persons that Threatned to Inform, and not *Gilkercleugh*. 6. As to *Gilkercleugh's* pretended Actual Informing; There is none of the Witnesses Depones except *George Ogilvie* who was Clerk to *Meldrum's* Commission; and vvho Declares that he vvvas sent by *Meldrum* as said is, only there is another named *Alexander Ogilvie* vvho is an Old blind sottish Body, and vvhen he vvvas first Examined, he vvvas not Examined in presence of the Partie, nor before the Commission but in a Privat house, and albeit the first Deposition seems to Concurr vvith *George Ogilvie* yet he thereafter Emitted a Declaration upon Soul and Conscience, that he did never see *Gilkercleugh* in the Tolbooth of *Hamilton*, nor did know that *Gilkercleugh* gave any Information against *Newtown*, only he heard *George Ogilvie* say so; which being but a Hear-say does not Prove, And albeit there were Concurring Testimonies as to that Particular. yet it makes nothing against *Gilkercleugh*, teing any Information he gave, was given to these that had Commission from the Government being required for that Effect, as appears by the Testimonies of the Witnesses, which he desires may be Read.

5. It was callumnious to alledge that the Cause of *Newtown's* Imprisonment, and of being Fined by the Council, was only for holding a Coppy of a Suspension for a Principal; it being noneense to say that the Privy Council would Fine a man for such a thing as that which is ordinary and that which is no Cryme, but the true Reason of his Imprisonment was because he was endeavouring to Defraud the Duke of *Hamilton* and Oppress the Countrey, and Malverse in his Trust, he being Employed by the Duke to Charge the Town of *Lithgow*, he took likeways Money from the Town and procured them a Suspension against Duke *Hamilton*.

6. The Act of Indemnity is opponed, which clearly meets this Case and has been many times sustained both before the Lords of Session and Justiciary, for freeing Parties both from the Cryme and Damage, and Interest, and the Claime of Right does no ways concern cases of this Nature which can only be understood of Declarations, doings and Proceedings in the Late Government that were contrair to Law, But it was no ways contrair to Law for the King to give an Indemnity to His Subjects, for if that were Sustained, then the Claim of Right might altogether take away the Act of Indemnity, and make it ineffectual which was never yet pretended, as also by the same Reason the Claim of Right might take away all Remissions given to any Party that had been granted these Fourty years by past, and what a Dangerous preparative that might be any man might easily judge, and seeing such Acts of Indemnity has always been Sustained in the ordinary Courts of Justiciary to Free the Parties both *quoad vindictam Publicam et priatam*, and Damage, and Interest, it ought likeways to be sustained to Liberate *Gilkercleugh* in this Case, if the Libel were otherways Relevant and Proven as it is not, and Acts of Indemnity are Land-marks which are Sacred, and ought not be Removed, nor somuch as touched, and if they should not be sustained in that Sense & Latitude, and conform to the Express Words of the Act, it minht Occasion a great deal of Confusion on the Nation, and would Frustrate the very End and Design of granting such Acts of Indemnity.

In Respect of all which *Gilkercleugh* Ought to be Affoizied from his Groundless, and Calumnious Pursuit.

